

*LOS ANGELES DISTRICT
U.S. ARMY CORPS OF ENGINEERS*

**DEPARTMENT OF THE ARMY REGIONAL GENERAL PERMIT
Regional General Permit No. 52
Emergency Actions Authorization**

Permittee: This Regional General Permit applies to all parties in the Los Angeles District of the U.S. Army Corps of Engineers, including the coastal drainages of Monterey County northward to the community of Gorda, the coastal drainages of San Luis Obispo County, all of Santa Barbara, Ventura, Los Angeles, San Bernardino, Riverside, Orange, San Diego and Imperial counties, the eastern drainages of Inyo County, the eastern drainages of Mono County to the Conway Summit, Kern County from the Tehachapi Mountains south, and all of the State of Arizona.

Permit Number: 97-00367-BAH

Issuing Office: Los Angeles District

Effective Date: January 21, 1998

Expiration Date: July 31, 1998

The District Engineer, Los Angeles District U.S. Army Corps of Engineers hereby issues Regional General Permit (RGP) No. 52, which authorizes necessary emergency flood protection measures in waters of the United States, including wetlands, where there is an imminent threat to life or property (such as those situations that could potentially result in an unacceptable hazard to life, a significant loss of property, or an immediate, unforeseen, and significant economic hardship if corrective action requiring a permit is not undertaken immediately). This regional general permit would be effective only during the anticipated El Niño situation of the winter and spring of 1997-1998.

This permit is being issued under Section 404 of the Clean Water Act of 1972 (33 U.S.C. 1344) and Section 10 of the River and Harbor Act of 1899 (33 U.S.C. 403) and is in accordance with provisions of the Regulatory Program of the Corps of Engineers (33 CFR Part 322.2(f)) for activities which are substantially similar in nature, and which cause only minimal individual and cumulative environmental impacts.

The term "you" and its derivatives, as used in this permit, means the permittee or any future transferee. The term "this office" refers to the appropriate district or division office of the Corps of Engineers having

jurisdiction over the permitted activity or the appropriate official acting under the authority of the commanding officer.

You are authorized to perform work in accordance with the terms and conditions specified below.

Activities Description:

This RGP is intended to provide a rapid response to public agencies and private parties for emergency flood protection measures that may result in a discharge of dredged or fill material in waters of the United States, including wetlands. However, pursuant to 33 CFR Part 323.4(a)(2), the discharge of dredged or fill material that may result from maintenance of currently serviceable structures such as dikes, dams, levees, groins, riprap, breakwaters, causeways, bridge abutments or approaches, and transportation structures is not prohibited by or otherwise subject to regulation under Section 404. Maintenance does not include any modification that changes the character, scope, or size of the original fill design; such modifications require separate Section 404 and/or Section 10 authorization. This maintenance exemption includes emergency reconstruction of recently damaged parts as a result of distinct events such as floods, earthquakes, fires, windstorms, etc. Emergency reconstruction must occur within a reasonable period of time after damage occurs in order to qualify for this exemption. Examples of exempt activities that may occur during flooding events includes debris removal from bridge piers and abutments, sediment and debris removal from concrete-lined flood control structures and concrete or steel pipe or box culverts, and all work conducted above the ordinary high water mark typical of the watercourse during normal or regular high water events (i.e., higher than normal flooding events are above the OHWM and Corps jurisdiction does not apply in the absence of adjacent wetlands). Note that 33 CFR Part 323.4(d) states “[a]ny discharge of dredge or fill material into waters of the United States incidental to any of the activities identified in paragraphs (a)(1)-(6) of this section must have a permit if it is part of an activity whose purpose is to convert an area of the waters of the United States into a use to which it was not previously subject, where the flow or circulation of waters of the United States may be impaired or the reach of such waters reduced. Where the proposed discharge will result in significant discernible alterations to flow or circulation, the presumption is that flow or circulation may be impaired by such alteration.” Further note that activities conducted under an exemption may still be constrained by regulations of one or more other agencies unless the agency or agencies have established separate emergency or exemption procedures.

This RGP is limited to sudden, unexpected situations that could potentially result in an unacceptable hazard to life, a significant loss of property, or an immediate, unforeseen, and significant economic hardship if corrective action requiring a permit is not undertaken within a time period less than the normal time needed to process the application under standard procedures. Examples of work anticipated for emergency authorization under this regional general permit include debris and sediment removal from channels or impoundments that are not hardened facilities (e.g., concrete-lined structures), placement of riprap for bank stabilization or bridge pier or abutment reinforcement, culvert cleanout if a limited area immediately upstream and/or downstream of the culvert or transportation structure requires additional work for hydraulic efficiency, construction of earthen berms for flow control, or minimal vegetation and/or sediment removal within watercourses to allow routing of flow within the existing riverplain. This list is not inclusive and other activities may be authorized if the Corps determines they are appropriate for the situation. The term “unexpected” as used above refers to situations that cannot be reasonably foreseen at any particular location in the long-term and always refers to other than routine maintenance activities or anticipated reconstruction or replacement. Unexpected situations are related to flood-induced damages or high probability of flood-induced damages. The term “property” as used above refers to physical

structures such as bridges, culverts, buildings, levees, etc., and income-producing lands such as row crops or orchards. The term “property” does not refer to landscaping, lawns, playing fields, pastureland, or other lands the erosion or inundation of which would not likely result in potential harm to existing structures or income-producing lands.

This RGP is not intended to address routine maintenance of channels or other projects in anticipation of a *potential* need in the longer term. The project proponent may apply for Department of the Army authorization under standard or other general permits already established.

This RGP does not authorize ancillary work conducted at the behest of a property owner in return for access rights to conduct necessary emergency responses. Such activities are violations of the Clean Water Act and enforcement actions will be pursued. If the permittee must gain access to effect a particular emergency response, and the property owner is uncooperative in granting access, the permittee should conduct condemnation proceedings to acquire such access.

For those projects affecting uses or resources of the coastal zone, the Federal Coastal Zone Management Act (CZMA) requires that the permittee obtain concurrence from the California Coastal Commission that the project is consistent with the state’s certified Coastal Management Program. For activities within the coastal zone that require a coastal development permit from the Commission, the permittee should contact the Commission office to request an emergency permit, and no additional federal consistency review is necessary. For activities within the coastal zone that require a coastal development permit from a local government with a certified local coastal program, the permittee should contact the appropriate local government. Since a coastal permit issued by a local agency does not satisfy the federal consistency requirements of the CZMA, the permittee should also contact James Raives, (415) 904-5292, Federal Consistency Coordinator for the Commission to determine the appropriate emergency procedures. For any activity outside the coastal zone, but with the potential to affect coastal uses or resources, or for any activity conducted by a federal agency, the permittee should contact James Raives, (415) 904-5292, Federal Consistency Coordinator for the Commission to determine the appropriate emergency procedures.

Due to the often limited time constraints with emergency actions, the Corps would not require the permittee to provide proof of review by the Commission, if such an action would result in undue harm to life or property. However, the Corps will require the permittee to provide evidence of consistency upon completion of the project unless the Corps is already aware that a particular project, class of projects, or projects in a particular area described by the Commission, have received such determinations or waivers.

This RGP authorizes discharge of storm sediments in tidal waters. If a need for this activity arises, the Corps will coordinate with other resource and regulatory agencies for their input. This disposal will require a regular or emergency permit from the Coastal Commission, or in those cases where the Commission does not have coastal development permit authority, the proposed activity will probably trigger federal consistency review.

This RGP does not in any way infringe upon the responsibilities of any other Federal, state or local agency that may have other jurisdictions that pertain to a particular action, nor does it obviate the need to acquire any other such approvals from other Federal, state or local agencies.

Water quality certification pursuant to Section 401 of the Clean Water Act, or waiver of certification, must be acquired for all emergency activities proposed for authorization under this RGP.

This RGP has been conditionally certified in California on non-Tribal lands by the State Water Resources Control Board. The SWRCB's conditions are incorporated in this permit. For all activities on Tribal lands in California and Arizona, certification or waiver must be received from the Environmental Protection Agency, except for lands under the control of the White Mountain Apache Tribe which certifies projects on their land for compliance with Section 401 of the CWA. For non-Tribal lands in Arizona, Section 401 certification or waiver must be received from the Arizona Department of Environmental Quality.

If any project may effect a species listed as threatened or endangered under the Endangered Species Act (ESA), or is proposed for listing under the Act, the applicant must forward such information to the Corps. If the applicant is unaware if the project may effect a listed species, the Corps and resource agencies will rely on institutional information regarding the potential presence of any listed species. If the species is known to be present, the Corps would so inform the U.S. Fish and Wildlife Service and/or the National Marine Fisheries Service to initiate formal consultation pursuant to Section 7 of the Act. Section 7 of the Act, as amended contains provisions for consultation in the event of emergencies that threaten human welfare or property. The Corps, U.S. Fish and Wildlife Service, and National Marine Fisheries Service have established local procedures to expedite coordination among the agencies during the impending rainy season. In brief, if the Corps determines that emergency authorization is warranted, Corps staff would contact, by telephone and/or facsimile transmission, specific personnel from the Service(s) to determine if listed species may be present and, if so, what actions could be taken during the emergency response to minimize the effects of the response on the listed species. These recommended measures would be provided by the Corps to the applicant seeking emergency authorization. As a requirement of the emergency authorization's conditions, the permittee would provide a written report to the Corps which describes the emergency, a justification of the emergency response, and an evaluation of the response to and the effects of the emergency on the listed species and their habitats. This information would be provided to the Corps at the conclusion of the emergency. In addition to the above information, the Corps will require that permittees provide a map of the affected areas and photographs of the emergency area prior to (if possible) and after the emergency action. At the conclusion of the rainy season, the Corps and the Service(s) would complete formal consultation on the effects of the emergency actions on listed species, as required by Section 7 of the ESA. The Corps and Service(s) will also use these procedures to consider the effects of flood response actions on species that are proposed for listing under the ESA.

The need for mitigation for impacts to aquatic resources will be determined on a case-by-case basis. The Corps will strive to be fair and judicious in any such determination. We recognize that many of the project areas that may be considered for authorization under this RGP may already be extremely affected by high storm flows and imposition of mitigation in such situations may be unwarranted. However, this may not be true for all actions authorized under this RGP. If the latter is determined to be true of a particular situation, the Corps, after discussion with other resource agencies and the permittee, will determine appropriate mitigation to replace impacted functions and values resulting from a specific project or group of projects within a defined geographic area. For those situations where aquatic resource functions and values are likely to return to conditions similar to the pre-project condition within one to two years, mitigation will not be necessary. If the project occurs in an area determined by Corps staff, with input from the resource and regulatory agencies, as well as the permittee, to be of relatively low value, mitigation requirements are expected to be lenient to the point of simply implementing best management practices. However, if a project area supported substantial functions and values prior to the flood event, and if the area would be likely to return to conditions similar to the pre-event condition in the absence of a project, and the permittee's activity has resulted in a situation where post-event functions and values are unlikely to return in the short term, such an activity would have to be mitigated to replace the impacted

functions and values. Also, if the permittee's project results in additional adverse impacts such as erosion of or deposition upon other properties, the additional adverse impact must be mitigated, preferably by modifying the permitted activity.

Failure to comply with all applicable permit conditions or to demonstrate a "good faith" effort to comply with permit conditions prior to initiating the project will be considered a violation of Section 404 of the Clean Water Act and/or Section 10 of the River and Harbor Act of 1899. Resolution of enforcement actions may include restoration to pre-project conditions, or after-the-fact authorization of a project after achieving compliance with applicable permit terms and conditions, including those imposed by the State Water Resources Control Board or EPA or the White Mountain Apache Tribe pursuant to Section 401 of the Clean Water Act, and/or mitigation as determined to be appropriate. For situations where the District Engineer determines the unauthorized activity to be willful, repeated, flagrant, or of substantial impact, he may recommend criminal or civil actions to obtain penalties and may refer the case to the local U.S. Attorney or to EPA.

Notification requirement - Prior to use of this RGP, prospective permittees must make all reasonable attempts to notify the Corps in accordance with the modified notification procedures under General Condition 2 of this RGP. A copy of the notification package should be sent to the U.S. Fish and Wildlife Service, National Marine Fisheries Service (if appropriate), California Coastal Commission (for projects which may affect the coastal zone), and the appropriate Regional Water Quality Control Board.

Work may not commence until verification of compliance with this RGP is received from the Corps, or five days have passed since the Corps receives a complete notification package, or unless the situation is an extreme exigency with an imminent threat to life or property and the prospective permittee has not received notice from the District Engineer. Subsequently, the permittee's right to proceed under the RGP may be modified, suspended, or revoked only in accordance with the procedure set forth in 33 CFR Part 325.7. In reviewing the notification for the proposed activity, the District Engineer will determine whether the activity authorized by the RGP will result in more than minimal individual or cumulative adverse environmental effects or may be contrary to the public interest. The prospective permittee may, optionally, submit a proposed mitigation plan with the notification to expedite the process and the District Engineer will consider any optional mitigation the applicant has included in the proposal in determining whether the net adverse environmental effects of the proposed work are minimal. If the District Engineer determines that the activity complies with the terms and conditions of the RGP and that the adverse effects are minimal, the District Engineer will notify the permittee and include any situation-specific conditions deemed necessary. It is anticipated that authorizations will be granted within six to 24 hours, whereas normal permitting scenarios often take 30 to 120 days or longer after the receipt of a complete application package.

If the District Engineer determines that the adverse effects of the proposed work are more than minimal, he will notify the applicant either: (1) that the project does not qualify for authorization under the RGP and instruct the applicant on the procedures to seek authorization under an individual permit; (2) that the project is authorized under the RGP subject to the applicant's submitting a mitigation proposal that would reduce the adverse effects to the minimal level; or (3) that the project is authorized under the RGP with or without specific modifications or conditions.

Permit Conditions

General Conditions:

1. The time limit for completing the authorized activity ends on **July 31, 1998**.
2. Notification: Prospective permittees must submit the following information to the Corps prior to use of this RGP:
 - (a) **Timing:** The prospective permittee must notify the District Engineer as early as possible and shall not begin the activity:
 - (1) Until notified by the District Engineer that the activity may proceed under the RGP with any special conditions imposed by the District or Division Engineer; or
 - (2) Unless the situation is an extreme exigency with imminent threat to life or property (such as those sudden, unexpected situations that could potentially result in an unacceptable hazard to life, a significant loss of property, or an immediate, unforeseen, and significant economic hardship if corrective action requiring a permit is not undertaken immediately) and the prospective permittee has not received notice from the District Engineer. Subsequently, the permittee's right to proceed under the RGP may be modified, suspended, or revoked only in accordance with the procedure set forth in 33 CFR Part 325.7.
 - (b) **Contents of Notification:** The notification should be in writing and include the following information:
 - (1) Name, address and telephone numbers of the prospective permittee; name and telephone number of a point of contact who should be familiar enough with the project to be able to provide responses to inquiries from Corps staff;
 - (2) Location of the proposed project;
 - (3) Brief but clear description of the imminent threat to life or property and the proposed project's purpose and need;
 - (4) Description of methods anticipated to be used to rectify the situation.
 - (c) **Form of Notification:** The standard individual permit application form (Form ENG 4345) may be used as the notification and must include all of the information required in (b)(1)-(4) of General Condition 2. A letter or facsimile transmission may also be used. In certain situations where there is an imminent threat to life or property and the permittee is unable to make contact with any Corps personnel on the attached list, a telephone call should be left on voice mail or a facsimile should be sent; both methods would include the name of the responsible party, a telephone number where they can be reached, the location of the project, the purpose and need for the project, and the methods used to rectify the situation. A written notification shall be provided as soon as practicable after the emergency is resolved.

The notification should be sent to the appropriate Corps office at the address provided on page 15, or sent by fax to the appropriate number provided.
 - (d) **District Engineer's Decision:** In reviewing the notification for the proposed activity, the District Engineer will determine whether the activity authorized by the RGP will result in more than minimal individual or cumulative adverse environmental effects or may be contrary to the public interest. The prospective permittee may, optionally, submit a proposed mitigation plan with the notification to expedite the process and the District Engineer will consider any optional mitigation the applicant has included in the proposal in determining whether the net adverse environmental effects of the

proposed work are minimal. If the District Engineer determines that the activity complies with the terms and conditions of the RGP and that the adverse effects are minimal, the District Engineer will notify the permittee and include any situation-specific conditions deemed necessary.

Mitigation proposals may be approved by the District Engineer after commencing work. If the prospective permittee elects to submit a mitigation plan, the District Engineer will expeditiously review the proposed mitigation plan.

If the District Engineer determines that the adverse effects of the proposed work are more than minimal, he will notify the applicant either: (1) that the project does not qualify for authorization under the RGP and instruct the applicant on the procedures to seek authorization under an individual permit; (2) that the project is authorized under the RGP subject to the applicant's submitting a mitigation proposal that would reduce the adverse effects to the minimal level; or (3) that the project is authorized under the RGP with or without specific modifications or conditions.

(e) **Agency Coordination:** The District Engineer will, upon receipt of a notification, provide immediately, by facsimile transmission, overnight mail or other expeditious manner, a copy to the appropriate offices of the U.S. Fish and Wildlife Service, the National Marine Fisheries Service, EPA, the State natural resource agency, the State water quality agency, and the State Historic Preservation Officer (SHPO). These agencies will be requested to telephone or fax the District Engineer, as expeditiously as possible, notice as to whether they intend to provide substantive, site-specific comments. If so contacted by an agency, the District Engineer will allow them to provide their comments in a short timeframe determined by the Corps on a case-by-case basis to not likely result in loss of life or property before making a decision on the notification. The District Engineer will fully consider agency comments received within the specified time frame, but will provide no response to the resource agency at the time of the decision.

The District Engineer will fully consider any comments from Federal and State agencies concerning the proposed activity's compliance with the terms and conditions and the need for mitigation to reduce the project's adverse environmental effects to a minimal level, and will so indicate in the administrative record associated with each notification.

(f) **Mitigation:** Factors that the District Engineer will consider when determining the acceptability of appropriate and practicable mitigation include, but are not limited to:

- (1) Approximate functions and values of the aquatic resource being impacted, such as habitat value, aquifer recharge, sediment conveyance or retention, flood storage, etc.,
- (2) The permanence of the project's impacts on the resource, and
- (3) The potential long-term effects of the action on remaining functions and values of the aquatic resource.

To be practicable, the mitigation must be available and capable of being done considering costs, existing technology, and logistics in light of the overall project purposes.

To the extent appropriate, permittees should consider mitigation banking and other forms of mitigation, including contributions to wetland trust funds, "in lieu fees" to organizations such as The Nature Conservancy, state or county natural resource management agencies, where such fees contribute to the restoration, creation, replacement, enhancement, or preservation of aquatic resources.

Furthermore, examples of mitigation that may be appropriate and practicable include but are not limited to: reducing the size of the project; establishing wetland or upland buffer zones to protect aquatic resource values; and replacing the loss of aquatic resource values by creating, restoring, and enhancing similar functions and values. In addition, mitigation must address aquatic resource impacts to functions and values such as habitat values, aquifer recharge, sediment conveyance or retention, flood storage, etc.

Discharges of dredged or fill material into waters of the United States must be minimized or avoided to the maximum extent practicable at the project site. Every effort must be made to ensure any material dredged or excavated from a waters of the United States is not likely to be washed back into any waters of the United States.

3. Any work authorized under this regional general permit must be the minimum necessary to alleviate the immediate emergency, unless complete reconstruction does not result in significantly increased impacts to aquatic resources and logistical concerns indicate such reconstruction is as expedient considering the condition of the project site. For example, it may be determined that reconstruction of a bridge crossing or roadway damaged through flood flows is a more appropriate course of action than simple shoring up of the facility to allow an immediate return to use. When continued public safety is an issue, such reconstruction will remain a viable option for consideration of authorization under this RGP.

4. The permittee shall provide a written report to the Corps as soon as practicable after completion of any emergency action (preferably within 30 days) conducted under this regional general permit. If there are a substantial number of projects and this requirement would consume substantial quantities of agency staff resources, the agency could optionally submit a comprehensive report providing all of the information required in the notification condition above. The report(s) shall include a description of the emergency and the potential for loss of life or property, maps to the project location, pre- (if possible) and post-construction photographs, quantities of material used (as applicable), and areal and lineal extent of the project. If the project was conducted within an area known to harbor Federally listed or proposed species, or designated or proposed critical habitat, the permittee shall also provide a copy of this report to the U.S. Fish and Wildlife Service and/or the National Marine Fisheries Service, as appropriate. If mitigation is determined to be appropriate for any particular project or group of projects, a mitigation proposal must be submitted to the Corps for review and approval; the Corps would forward the report to appropriate parties for their review and comment.

5. Navigation: No activity may cause more than a minimal adverse effect on the course or capacity of a navigable water.

6. Proper Maintenance: Any structure or fill authorized shall be properly maintained, including maintenance to ensure public safety, unless it is later determined that the structure is further contributing to other adverse conditions to private or public property. In such situations, corrective measures will be taken to rectify these adverse conditions, including removal and/or redesign of the original emergency corrective action, or appropriate mitigation as determined through coordination with the permittee and the appropriate Federal and state resource agencies.

7. Erosion and Siltation Controls: When feasible, erosion and siltation controls, such as siltation or turbidity curtains, sedimentation basins, and/or hay bales or other means designed to minimize increasing turbidity in the watercourse above background levels existing at the time of construction, shall be used and maintained in effective operating condition during construction unless conditions preclude their use, or if conditions are such that the proposed work would not increase turbidity levels above the background level existing at the time of the work. All exposed soil and other fills, as well as any work below the ordinary high water mark or high tide line, must be stabilized at the earliest practicable date to preclude additional damage to the project area through erosion or siltation.

8. Aquatic Life Movements: No activity may substantially disrupt the movement of those species of aquatic life indigenous to the waterbody, including those species which normally migrate through the area, unless the activity's primary purpose is to impound water.

9. Equipment: When feasible and if personnel would not be put into any additional potential hazard, heavy equipment working in wetlands must be placed on mats, or other measures must be taken to minimize soil disturbance.

10. Regional and Case-by-Case Conditions: The activity must comply with any regional conditions which may have been added by the Division Engineer (see 33 CFR 330.4(e)) and with any case specific conditions added by the Corps or by the state, EPA or White Mountain Apache Tribe in its Section 401 water quality certification.

11. Wild and Scenic Rivers: No activity may occur in a component of the National Wild and Scenic River System; or in a river officially designated by Congress as a "study river" for possible inclusion in the system, while the river is in an official study status; unless the appropriate Federal agency, with direct management responsibility for such river, has determined in writing that the proposed activity will not adversely affect the Wild and Scenic River designation, or study status. Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency in the area (e.g., National Park Service, U.S. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service.)

12. Tribal Rights: No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.

13. Water Quality Certification: An individual Section 401 water quality certification must be obtained or waived unless general Section 401 certifications are issued or waived for this regional general permit in the project area (see 33 CFR 330.4(c)). The California State Water Resources Control Board conditionally certified the RGP by letter dated November 4, 1997 with the following conditions which apply on all non-Tribal lands within the state of California:

- A. Within those activities specified within RGP 52, certification is limited to activities involving:
 - (1) emergency repairs to public service facilities necessary to maintain service;
 - (2) projects undertaken, carried out, or approved by a public agency to maintain, repair, restore, demolish, or replace property or facilities damaged or destroyed as a result of a disaster in a disaster-stricken area in which a state of emergency has been proclaimed by the Governor pursuant to Chapter 7 (§8550 et seq.) of Division 1 of Title 2 of the Government Code.
 - (3) specific actions by public agencies and private parties necessary to prevent or diminish an immediately imminent or transpiring emergency.
- B. Prospective permittees will send a copy of any notification sent to the District to the appropriate Regional Water Quality Control Board(s) at the address(es) included in the enclosure and to the State Water Resources Control Board.
- C. Activities permitted shall not result in the take of any State endangered species, threatened species, or candidate species or the habitat of such a species unless the activity is authorized by the Department of Fish and Game pursuant to a permit, memorandum of understanding, or

other document or program in accordance with Fish and Game Code Sections 2081, 2081.1, or 2086.

- D. By copy of correspondence with the applicant, the Corps shall notify the SWRCB and appropriate RWQCB(s) at the addresses enclosed of any project-specific special conditions or mitigation requirements which the Corps imposes.
- E. This certification and its conditions are subject to modification or revocation upon appropriate administration or judicial review.

14. Coastal Zone Management: In California, an individual state coastal zone management consistency concurrence must be obtained or waived (see Section 330.4(d)) where the project may affect the Coastal Zone unless general concurrences are issued or waived for this regional general permit in the project area.

For those projects affecting uses or resources of the coastal zone, the Federal Coastal Zone Management Act (CZMA) requires that the permittee obtain concurrence from the California Coastal Commission that the project is consistent with the state's certified Coastal Management Program. For activities within the coastal zone that require a coastal development permit from the Commission, the permittee should contact the Commission office to request an emergency permit, and no additional federal consistency review is necessary. For activities within the coastal zone that require a coastal development permit from a local government with a certified local coastal program, the permittee should contact the appropriate local government. Since a coastal permit issued by a local agency does not satisfy the federal consistency requirements of the CZMA, the permittee should also contact James Raives, (415) 904-5292, Federal Consistency Coordinator for the Commission to determine the appropriate emergency procedures. For any activity outside the coastal zone, but with the potential to affect coastal uses or resources, or for any activity conducted by a federal agency, the permittee should contact James Raives, (415) 904-5292, Federal Consistency Coordinator for the Commission to determine the appropriate emergency procedures.

In situations of extreme exigency the permittee will not be required to provide proof of review by the Commission prior to conducting his emergency response if such an action would result in undue harm to life or property. However, the Corps will require the permittee to provide evidence of consistency upon completion of the project unless the Corps is already aware that a particular project, class of projects, or projects in a particular area described by the Commission, have received such determinations or waivers.

15. Endangered Species:

(a) Permittees shall notify the District Engineer if any listed or proposed species or designated critical habitat might be affected or is in the vicinity of the project, and shall not begin work on the activity until notified by the District Engineer that the requirements of the Endangered Species Act have been satisfied and that the activity is authorized, unless there is imminent threat to life or property (such as those sudden, unexpected situations that could potentially result in an unacceptable hazard to life, a significant loss of property, or an immediate, unforeseen, and significant economic hardship if corrective action requiring a permit is not undertaken immediately) and the prospective permittee has not received notice from the District Engineer. In all circumstances, the permittee shall, if aware of the potential presence of a listed species or designated critical habitat, make considerable efforts to contact the Corps and/or personnel at USFWS and/or NMFS. In some cases, the FWS and NMFS may be able to make *a priori* determinations that listed species are not present.

(b) Authorization of an activity by this regional general permit does not authorize the “take” of a listed or proposed threatened or endangered species, or the destruction or adverse modification of designated or proposed critical habitat as defined under the Federal Endangered Species Act unless the permittee has fulfilled his or her requirements for emergency consultation, pursuant to Section 7 of the ESA, as described in the **Endangered Species** portion of this RGP. In the absence of emergency consultation through the Corps or separate or programmatic authorization (an approved Section 10(a)(1)(B) permit or a completed biological opinion) from the FWS or NMFS, both lethal and non-lethal takings of listed species are prohibited by Section 9 of the ESA. Information on the location of listed or proposed threatened and endangered species and their designated or proposed critical habitat can be obtained directly from the offices of the U.S. Fish and Wildlife Service and National Marine Fisheries Service or their world wide web pages at

<http://www.fws.gov/-r9endspp/endspp.html> (for Endangered Species) and
http://kingfish.nmfs.gov/tmcintyr/prot_res.html (for Recovery).

To the extent possible, the Corps will implement any programmatic biological opinions and incidental take statements that may be available. Any terms and conditions inherent with these documents will become conditions on a particular action’s utilization of this regional general permit.

In many cases, information on the presence of listed and proposed species at a specific project site may not be available. In such cases, the nature of the emergency may prevent a permittee from conducting the surveys necessary to make a reasonable determination. Therefore, the permittee may assume that the species is present, if suitable habitat occurs onsite, and request that the emergency provisions of Section 7 of the ESA be implemented.

16. Historic Properties: No activity which may affect historic properties listed, or eligible for listing, in the National Register of Historic Places is authorized until the District Engineer has complied with the provisions of 33 CFR Part 325, Appendix C. The prospective permittee must notify the District Engineer if the proposed activity may affect any historic properties listed, determined to be eligible, or which the prospective permittee has reason to believe may be eligible for listing on the National Register of Historic Places, and shall not begin the activity until notified by the District Engineer that the requirements of the NHPA have been satisfied and that the activity is authorized. Information on the location and existence of historic resources can be obtained from the State Historic Preservation Office and the National Register of Historic Places (see 33 CFR 330.4(g)).

17. Water Supply Intakes: No discharge of dredged or fill material may occur in the proximity of a public water supply intake except where the discharge is for repair of the public water supply intake structures or adjacent bank stabilization.

18. Shellfish Production: No discharge of dredged or fill material may occur in areas of concentrated shellfish production, unless the discharge is directly related to a shellfish harvesting activity authorized by NWP 4.

19. Suitable Material: No discharge of dredged or fill material may consist of unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.) and material discharged must be free from toxic pollutants in toxic amounts (see section 307 of the Clean Water Act).

20. Spawning Areas: Discharges in spawning areas during spawning seasons must be avoided to the maximum extent practicable.

21. Obstruction of High Flows: To the maximum extent practicable, discharges must not permanently restrict or impede the passage of normal or expected high flows or cause the relocation of the water except within the existing riverplain (unless the primary purpose of the fill is to impound waters).

22. Adverse Effects From Impoundments: If the discharge creates an impoundment of water, adverse effects on the aquatic system caused by the accelerated passage of water and/or the restriction of its flow shall be minimized to the maximum extent practicable.

23. Waterfowl Breeding Areas: Discharges into breeding areas for migratory waterfowl must be avoided to the maximum extent practicable.

24. Removal of Temporary Fills: If deemed necessary, temporary fills shall be removed in their entirety and the affected areas returned to their preexisting elevation and revegetated with appropriate native riparian or wetland vegetation common to the area. If an area impacted by such temporary fill is considered likely to naturally reestablish native riparian or wetland vegetation within two years to a level similar to pre-project or pre-event conditions, the permittee will not be required to do so.

Further Information:

1. Congressional Authorities. You have been authorized to undertake the activity described above pursuant to:

(X) Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403).

(X) Section 404 of the Clean Water Act (33 U.S.C. 1344).

() Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C. 1413).

2. Limits of this authorization.

a. This permit does not obviate the need to obtain other Federal, state, or local authorizations required by law.

b. This permit does not grant any property rights or exclusive privileges.

c. This permit does not authorize any injury to the property or rights of others.

d. This permit does not authorize interference with any existing or proposed Federal project.

3. Limits of Federal Liability. In issuing this permit, the Federal Government does not assume any liability for the following:

a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.

- b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.
 - c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.
 - d. Design or construction deficiencies associated with the permitted work.
 - e. Damage claims associated with any future modification, suspension, or revocation of this permit.
4. **Reevaluation of Permit Decision.** This office may reevaluate its decision on this permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:
- a. You fail to comply with the terms and conditions of this permit.
 - b. The information provided by you in support of your permit application proves to have been false, incomplete, or inaccurate.
 - c. Significant new information surfaces which this office did not consider in reaching the original public interest decision.

Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you to comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measure ordered by this office, and if you fail to comply with such directive, this office may in certain situations (such as those specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost.

This permit is issued for and on behalf of Colonel Robert L. Davis, District Engineer.

Richard J. Schubel DATE
Chief, Regulatory Branch

Image Not
Available

*LOS ANGELES DISTRICT
U.S. ARMY CORPS OF ENGINEERS*

**CERTIFICATION OF COMPLIANCE WITH
DEPARTMENT OF THE ARMY PERMIT**

Permit Number: 97-00367-BAH

Date of Issuance: January 21, 1998

Upon completion of the activity authorized by this permit, sign this certification and return it to the following address:

Regulatory Branch - Los Angeles District Office
ATTN: CESPL-CO-R-97-00367-BAH
P.O. Box 2711
Los Angeles, California 90053-2352

Please note that your permitted activity is subject to a compliance inspection by an Army Corps of Engineers representative. If you fail to comply with this permit you may be subject to permit suspension, modification, or revocation.

I hereby certify that the work authorized by the above referenced permit has been completed in accordance with the terms and conditions of said permit.

Signature of Permittee

Date

Pre-Construction Notification
Pursuant to RGP52
Emergency Authorizations Regional General Permit

This information should be sent to the appropriate Corps office on the attached lists.

1. Name of applicant _____ Phone _____

1a. Name of point of contact familiar with project _____

POC Phone _____

2. Project location _____

3. Description of emergency _____

4. Description of response _____
